

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2013] NZLCDT 11

LCDT 022/12

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

AND

IN THE MATTER

of **SHERYL TIER**, former
employee

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr G Mackenzie

Ms C Rowe

Ms S Sage

Mr W Smith

DATE OF HEARING 28 February 2013

APPEARANCES

Mr L Clancy for the Standards Committee

No appearance by Ms Tier

**ORAL DECISION OF NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

Introduction

[1] This is a matter in which Sheryl Tier who is not present today, faces a charge that as an employee formerly employed by Ed Johnston and Company that she engaged in misconduct, which would if the conduct of a legal practitioner, render a practitioner liable to have his or her name struck off the roll.

[2] The matter has proceeded by way of formal proof after the Tribunal was satisfied that it has been properly served.

[3] Ms Tier it seems has left the country but communicated with the Tribunal through an email address. That address was used after an order for substituted service was granted. Subsequently Ms Tier acknowledged service and has at least on one further occasion communicated using the email address at which service was effected.

[4] The conduct which is alleged to be misconduct is basically that Ms Tier as a Legal Executive employed by the firm referred to, received a cheque in the sum of \$30,326.02 from clients of the firm. The clients intended that that money be applied to repay a mortgage which had been borrowed from another client of Mr Johnston's firm, within the then lending arrangements which appeared to be conducted by that firm.

[5] I should perhaps indicate at this stage the practitioner who formerly employed Ms Tier is currently subject to an interim suspension order and has been bankrupted and that it is now probably about a year since the loan book of that firm was closed after proceedings before the Tribunal. So this situation in relation to this firm at least cannot recur.

[6] However it appears that a fair degree of autonomy and trust was placed in Ms Tier and that she dealt directly with clients. The cheque that was received by her was made out to Westpac S Tier, and Ms Tier appears to have received that and instead of accounting for the funds to the client from whom they'd been borrowed crediting the borrower client with payment of those funds, Ms Tier paid them into her personal account.

[7] We have heard evidence from the complainant Mr V today who confirms the \$30,000 advance to the borrower, and that he has received nothing in payment, and thus we are satisfied that at no stage has Ms Tier accounted for the funds received by her.

[8] The section which provides the Tribunal with jurisdiction in relation to a non practitioner is s 242(1)(h), which provides that if a person is an employee or former employee of a practitioner, the Tribunal can make certain orders relating to the future or current employment of a person who has been found guilty of the misconduct to which we have referred. So the threshold is that there must be conduct which would amount to misconduct in a legal practitioner. This conduct certainly meets that standard. It is a clear case of opportunistic theft, furthermore public protection clearly requires that this person not be entrusted with other people's money and that potential employers are on notice about her conduct in this matter.

[9] The order is therefore entirely necessary. The penalty orders sought by the Standards Committee are straightforward, they are the order under s 242(h)(ii). Further orders are also sought in relation to costs and this morning an oral application has been made seeking compensation for the complainant pursuant to s 156(1)(d) of the Act which provides a sum of up to \$25,000.00 can be awarded where any act or omission of a practitioner or former practitioner or employee or former employee has resulted in loss. Again this test would appear to have been met.

[10] There are one or two complicating factors in this. One is that the complainant has a judgment against the main practitioner Mr Johnston in the sum of \$170,000.00 in respect of a number of investments made through Mr Johnston's firm and unfortunately Mr Johnston as indicated has been declared bankrupt.

[11] Secondly the complainant has made an application to the fidelity fund of the New Zealand Law Society but that claim is yet to be investigated and considered by the Society. Clearly there ought not to be compensation that duplicates the complainant's loss, but on the other hand should either of those sources fail to provide satisfaction and recovery of the loss to the complainant, we consider that an order for compensation ought to be made so it will be made on a conditional basis.

[12] We move immediately then to make the orders in terms of the penalty to be imposed today misconduct having been established in terms of this decision.

Orders

- (a) Pursuant to s 242(1)(h)(ii) that no practitioner or incorporated firm employ Sheryl Tier in connection with the practitioner's or incorporated firm's practice so long as this order remains in force.
- (b) Pursuant to s 156(d) an order in sum of \$25,000 in favour of [name suppressed]. That name to be suppressed in any publication of this decision. That order is made on the basis that [name suppressed] does not receive reimbursement for this particular loss from another source.
- (c) Costs are ordered in favour of the New Zealand Law Society against Ms Tier in the sum of \$5,432.52 pursuant to s 249.
- (d) The Tribunal s 257 costs are ordered against the New Zealand Law Society in the sum of \$1,200.00.
- (e) Pursuant to s 249 reimbursement of the sum of \$1,200.00 to the New Zealand Law Society is ordered against Ms Tier.

[13] The final matter to be recorded is that internet inquiries have indicated to the Standards Committee that Ms Tier may well be currently employed by a law firm in Melbourne, Australia. The New Zealand Law Society may wish to investigate whether the person referred to is the Ms Tier that these charges have been found against and penalties imposed and notify the relevant professional body in Australia of this charge and the penalties imposed.

DATED at AUCKLAND this 28th day of February 2013

Judge D F Clarkson
Chair